

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 29.05.2012
Pronounced on: 02.07.2012

+ **CRL.A. 832/2009**

RAM KUMAR Appellant

Through : Sh. S.K. Pandey, Advocate.

versus

STATE Respondent

Through : Sh. Sanjay Lao, APP.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

MR. JUSTICE S.RAVINDRA BHAT

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1. The appellant is aggrieved by a judgment and order (“impugned judgment”) of a learned Additional Sessions Judge (hereafter “Trial Court”) dated 18.09.2009 and 01.10.2009 respectively, by which he was convicted for the offences punishable under Sections 302/201 IPC and sentenced to undergo life imprisonment, and also to pay fine.

2. The appellant, Ram Kumar was arrested by the policemen of P.S. Dabri on 25.03.2004 and was charged for committing offences punishable under Sections 302/201 IPC. The prosecution’s allegations were that intimation (*rukka*) DD No.42A Ext.PW4/A, was received on 23.03.2004 at about 11.30 PM at the instance of complainant Balraj who went to the police station and lodged a complaint stating that on the first floor of his House No.

D-48, Dasrath Puri, the appellant who was his tenant used to reside with his family. The appellant was employed in the Army and was posted with TPT Company, Dhaula Kuan. The complainant, stated that the accused left the house at 10.30 PM on the same day stating that he was going to Glacier on a new posting *via* Dhaula Kuan. The complainant heard the noise of a cooler, and went upstairs; after opening the door lock, he found the dead body of Shweta @ Pinki (the accused's wife) lying covered with a sheet in the lower shelf of a cemented *almirah*. The complainant immediately rushed and reported this to the police station. During the investigation, the police conducted necessary proceedings such as preparation of the site plan at the spot, photographing the site, seizure of physical clues relating to the incident of murder lying at the spot, etc. Inquest proceedings on the dead body of the deceased were conducted. The body was sent for postmortem and the report was collected after it was conducted.

3. The accused was interrogated and he made a disclosure statement to the effect that he was working as a driver with Army Transport Coy, ASE. During further investigation, the police recorded the statements of the witnesses. The accused was arrested on 25.03.2004. After completion of the investigation, the police filed charge sheet against the accused in the court. The Trial Court charged the accused for committing offences punishable under Section 302/201 IPC. The Appellant pleaded not guilty to the charge and claimed trial. During the course of trial, the prosecution in order to substantiate its case against the accused examined twenty four witnesses, and relied on several exhibits and documentary materials. After considering these, the Trial Court held that the accused was guilty of the offences he was charged with.

4. To conclude that the accused was guilty as charged, the Trial Court relied on the testimony of the landlord complainant, PW-3, who discovered the body of the deceased and PW-7, his wife. The Trial Court also took into account the statement recorded by Deepti, under Section 164, Cr PC; PW-8 had taken her to the magistrate. After considering these, and the post mortem report, the Court held that the prosecution had proved all the circumstances alleged against the accused, and that they pointed only to his guilt, and not that of anyone else.

5. It was argued on behalf of the appellant that he was falsely implicated in the case. There was no evidence to connect him with the commission of the offence. Counsel stressed the fact that the prosecution had relied heavily on the statement of the maid servant Deepti; yet she was never examined in the court. On the other hand, the Trial Court sought to place reliance on her statement recorded under Section 164 Cr. PC. She could have been the best witness to the incident; she was not produced in the Court and even the so called statement under Section 164 was not proved in accordance with law.

6. It was argued that there was no credible evidence that the appellant ever resided at the place of incident with the deceased. In this respect, the heavy reliance placed on the testimony of PW-3, owner of the premises, and his wife PW-7, who were concededly living there, and were the admitted last seen persons, could not have been the basis of the appellant's conviction. It was argued that the Trial Court did not consider the fact that the complainant and other tenants or his family members, could have committed the offence but in order to save themselves, they falsely implicated the appellant and for the said reason, the son of the complainant was not made a witness.

7. Counsel submitted that there were material discrepancies in the

prosecution case. In this context, it was submitted that the circumstance of last seen, which was relied on by the Trial Court, could not have been pressed into service, in the case, because the post mortem report showed that the time lag between the time of death, and the time when the landlord saw the accused last, was too much. The possibility of someone other than the appellant being involved in the crime, could not be ruled out. It was greatly emphasized that being a circumstantial evidence based case, the prosecution had to prove motive. The accused had no motive to murder the deceased. In support of his contentions, the appellant's counsel relied upon *Hanumant v. The State of Madhya Pradesh*, AIR 1952 SC 343 and *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116.

8. It was argued that when the prosecution relies on evidence of the deceased having been last seen in the company of the accused, in such cases too all the circumstances have to be proved, as in the other circumstantial evidence based prosecutions. In such "last seen" prosecutions, the court has to additionally be aware that apart from proof of all the circumstances, and the rigorous rule for proof of link of the chain of circumstances, the last seen theory applies only when the time gap between the accused and the deceased being last seen together alive and the time of death is so small that the possibility of anyone else being the author of the crime is impossible. Reliance was placed on *State of U.P. v. Satish*, AIR 2005 SC 1000; and *Malleshappa v. State of Karnataka*, AIR 2008 SC 69. It was argued that in *Bodh Raj @ Bodha & Ors. v. State of Jammu and Kashmir*, (2002) 8 SCC 45, the Supreme Court held that the last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that

possibility of any person other than the accused being author of the crime becomes impossible. Counsel also relied on *Mohibur Rehman & Anr. v. State of Assam*, (2002) 6 SCC 715, where the Supreme Court held that the circumstance of last seen together would not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime.

9. Counsel argued that the whole prosecution story about the time was utterly unbelievable, because even according to the prosecution evidence, particularly PW-3's deposition, there was a foul smell emanating from the place where the body was found. This would indicate that the time of death or attack was much prior to the discovery of the body, and not according to what was alleged by the prosecution.

10. The learned APP argued that the conviction and sentence handed down by the Trial Court was justified, and did not call for interference. It was submitted that the testimony of prosecution witnesses had clearly and conclusively proved that it was the appellant, and none else, who was responsible for the crime. It was submitted that the evidence of the deceased's mother PW-3 established that she had been married earlier, but started living with the accused. Similarly, PW-1, the doctor had proved that the deceased had given birth to a girl, and left the Nursing home, accompanying the accused. These, and the testimony of PW-3 and PW-7 proved not only intimacy of the accused with the deceased but also that they were living together, and had a child out of the relationship. Furthermore, the available evidence proved that the accused had been living with the deceased, and had been last seen with her. Though the prosecution wished to

rely on the testimony of the maid Deepti, on account of her unavailability, she could not depose in the court. It was argued that the inability of the prosecution to prove motive could not diminish the conclusive nature of proof that was led before the court, about the accused's guilt.

11. In the present case, PW1 Dr.Shakuntala Singh deposed that in her Nursing home a girl child was born to the deceased and on next day she was discharged. She left the Nursing Home and was accompanied by the accused at that time. In her cross-examination she deposed that the deceased had told her that the accused was her husband. All payments of medical bills were made by the appellant. In her cross-examination PW-1 deposed that she did not issue a birth certificate as the accused did return to her later to collect it. PW-2 Deepali the deceased's mother, deposed that the deceased had told her that she had married the accused in Delhi and was living with him. She said that deceased telephoned and told that she had married the accused in Delhi and that after her marriage the deceased went to her native place along with the girl child. The witness deposed that on 22.03.2004 the appellant made a call intimating her that he was going to Kashmir leaving the deceased in Delhi and on the same day at about 5 PM someone made a call intimating her that he had boarded deceased and her child in a train for Guwahati. She also testified that the voice on the phone was that of accused himself. In the cross-examination of PW2, no contrary suggestion was given to her. In cross-examination, the witness deposed that she used to stay at the house of one Geeta Devi as domestic servant from 9 AM to 6 AM and that she received the telephonic call there from the accused and the second call was received at about 5 PM. The witness deposed that Geeta Devi was aware of her conversation with the deceased on 22.03.2004. PW-2 was an illiterate

lady and was working as a domestic help in Assam.

12. PW3 Balraj is the complainant; he proved the complaint and deposed that the accused was residing as tenant on the first floor of D-48, Dasrath Puri for about six months from October, 2003 to March, 2004. The accused was residing there with the deceased and a baby girl of one and half years. The accused had also brought the maid servant Deepti later on. The accused was working with Army in the Transport Department. On 22.03.2004, when he returned in the evening accused met him and he enquired from the accused where his wife and child were, as they had not been seen for last two days, the accused told PW-3 that he has been transferred to a place near the Chinese border, known as Glacier. On PW-3 being asked the accused regarding whereabouts of his family members, the accused gave an evasive reply stating that they had gone to attend a party. When the witness asked about the maid servant, the accused told him that she had gone in search of his wife. According to the witness, at about 10.30 PM the accused gave him the keys of the house and went away with his personal belongings in a three wheeler. The accused left his cooler installed at his tenanted premises in a running condition. On hearing the noise of the cooler, he went upstairs and opened the door of the tenanted premises and found the dead body of the wife of the accused kept in the bottom column of the cupboard and wrapped in a bed sheet. He immediately rushed to the police station and narrated the entire incident to the police. At the outset, it has to be noticed that according to the witnesses' deposition, in examination-in-chief he went to the Police Station on 22.03.2004 while the prosecution alleged that he had gone to the Police Station on 23.03.2004. In cross-examination, PW3 corrected himself and deposed that he had gone to Police Station on 23.03.2004 at 11 PM

where SI Chattar Singh recorded his statement. The witness also said that he saw Deepti last in the morning of 22.03.2004 and she was with the girl child of the deceased. This supports the prosecution story. PW3 was cross-examined more than one and half years after the incident. PW-7, the wife of PW-3 fully corroborated the prosecution story. She clarified the date to be 23.03.2004 when the appellant had handed over the keys of the tenanted premises to her husband.

13. To corroborate the testimony of PW-3 about the residence of the appellant, the prosecution had relied on the testimonies of PW-5 and PW-6. PW-5 V.K.Malik, a formal witness proved the bank statement of the savings account of the accused. PW-6, Atul Chawla proved that a TV had been purchased by the accused and produced a certificate Ext.PW6/A. PW-8 a lady constable Lalita had taken Deepti (the deceased's maid) to SDM,Village Bogai, Assam for recording of her statement under Section 164 Cr P C.

14. PW19 Dr. B.N.Mishra proved the postmortem report of deceased as Ext.PW19/A. The witness proved the following ante-mortem injuries on the body of the deceased at the time of postmortem examination:

- “i) One lacerated wound on left occipital region 4cm above occipital protuberance size 1.4cm x 1cm x bone deep.*
- ii) One lacerated wound was found on left perital region 5cm away from injury no.1 size 1.3cm x 1cm x bone deep.*
- iii) Lacerated wound on left temporal region 4.5cm below injury no.2 size 1.2cm x 1cm x bone deep.*
- iv) Lacerated wound on left zygoma size 1.2cm x 1.1cm x bone deep.*

Internal Examination

i) Haemorrhage present under scalp.

ii) Fractured left Occipital, left temporal bone and left parital bone of skull.

iii) Extra dural and sub-dural haemorrhage present.

iv) The maggots were found into natural orifices with set up decomposition on the body.

15. Apparently, one Dr. M.M. Narnaware had conducted the deceased's postmortem. It was not possible to examine him, because of his death. The cause of death was – according to the post mortem report- the result of head injuries. PW19 deposed that Dr. Narnaware had conducted the postmortem of the deceased and he opined that the injuries could have been caused from the weapon of offence i.e wooden handled hammer. He proved the opinion of Dr.Narnaware as Ex.PW19/C. PW19 also testified to the effect that death was about four and half days prior to postmortem examination The post-mortem examination was conducted on 27.03.2004 at DDU Hospital. The case of the prosecution is that the deceased was killed on 22nd March. Therefore it is clear, from PW19's deposition that Shweta @ Pinky died on 22-03-2004.

16. The deceased was known to the accused, a fact admitted by him in his statement under Section 313 Cr P C; it was also proved from the testimony of PW1, PW2, PW3 and PW7. PW3's deposition establishes how he became aware about the murder which took place in his tenant's premises. It was not unusual for PW-3 to go to the tenanted premises to switch off the cooler. PW3 deposed that when he asked the appellant about his family members i.e deceased, the baby and about the maid Deepati, he answered evasively. The

deceased's body was found in the premises after the accused left the house in a three wheeler. PW3 naturally suspected the involvement of the accused in the commission of the murder of the deceased. PW3 lodged the complaint with the police immediately on his coming to know the commission of the offence. His statement was recorded at 2:30 AM, on 24-03-2004. The FIR (Ex. PW-14/A) was recorded immediately after the *rukka* (Ex. PW-3/A). Other documents, such as statements of witnesses, etc, appear to have been recorded on 24th March, itself. There was no inordinate delay in lodging the report with the police. While appearing as PW3, complainant supported the prosecution case.

17. It would now be necessary to discuss the infirmities in the prosecution case, and inconsistencies in the testimonies, sought to be highlighted by the appellant's counsel. Considerable stress was made on the fact that PW-3 repeatedly deposed to having seen the accused last on 22-03-2004. It was submitted that this conflicted with the prosecution story about his having reported the matter late in the evening of 23rd March, 2004, and investigation into the matter proceeded from then on. In his examination in chief, this witness stated as follows:

“On 22nd March 2004, when I returned home in the evening accused met me and inquired from him as to where were his wife and children as I had not seen them for about two days. On this accused told me that he has been transferred to a place somewhere near China border known as Glacier. When I again asked him as to why he was going without disclosing the whereabouts of his family members, he gave evasive reply and told me that they had gone to attend some party. I also asked accused about the whereabouts of his maid servant and small girl. Then accused told me that his maid servant had gone somewhere in search of his wife alongwith his child. I advised

the accused to report the matter to the police for the missing of the wife of the accused and other inmates but the accused put off the matter. At about 10.30 pm on the same day accused gave me the keys of the house and went away with his personal belongings in a three wheeler scooter. The accused left the cooler installed at the house in running house. After the accused had left the house and hearing the noise of running of cooler I went upstairs and opened the door of the room under the tenancy of the accused in order to put off the cooler, I found the house hold articles scattered heather and either. I also noticed that the door of the almirah was lying open and in broken condition. I also noticed the blood stains in the room all around. I also saw that the dead body of wife of the accused was kept in the bottom column of the cupboard wrapped in a bed sheet. After seeing all this I immediately rushed to the police station and met the SHO Satpal Yadav and narrated the entire incident.

Significantly, in the cross examination, the witness stated as follows:

“On 22.3.04, the accused met me at about 8 pm when I made enquiry from him about his wife and children. I had stated this fact to police. (Confronted with statement Ex. PW3/A where it is not so recorded). The accused did not meet me on 23.03.04 at all. (Confronted with portion A to A of Ex. PW3/A where it is recorded that the accused told him in the morning on 23.3.04 that his wife Pinki had gone to attend a party and she had not returned.). Vol. The accused had made a telephone call at the house of a neighbourer and told me that he was speaking from Ambala and asked me whether his wife had returned or not. Radha Singh had come to call me and she told me that there was a phone for me. The house where I received the phone call from accused was at a distance of about 100 ft from my house. This telephonic conversation between me and the accused took place for one or two minutes between 5 am and 6 am on 23.3.04. My statement was recorded four or five times by the police. When I went to the PS around 11 pm on 23.3.04 and made statement Ex. PW4/A, I did not state that Ram Kumar had

committed murder. Whenever my statement was recorded by police, my signature was obtained on the same.

*My statement Ex. PW3/A was recorded on 24.3.04 but I do not remember the time when it was recorded. It was recorded at PS. When I had gone to the PS on 23.3.4 at around 11 PM. I had gone from the PS with SHO to the unit of the accused and SI Chatar Singh had gone to my house. Chatar Singh stayed at my house for about 3 hours. The statement of my wife was also recorded by police at PS. My wife was called to the PS in the morning on 24.3.04. I have one daughter and two sons. My elder son was aged about 17 years and he was studying in XII class. My younger son was aged about 14 years and he was also studying. My daughter was aged about 19 years. The statement of my wife was recorded only once. I can identify the signatures of my wife. Ex. PW3/DA bears signature of my wife at point A. It is wrong to suggest that I had not gone to the unit of the accused with the SHO. The name of my elder son is Rajnish. Rajnish had gone with us to the unit of the accused. He had gone with me to the PS. Accused Ram Kumar had left on 22.3.4 at about 10.30 pm after giving me the key of his room and his phone number. Today I have noted the phone number and the name of the deceased on my left palm. I went upstairs about ½ hour after the accused left on 22.3.04 and then I heard the sound of the cooler and accused left the room of the accused. **Not on hearing sound of cooler but otherwise** (these lines are hand written in the statement)*

To Court: *I immediately went to the PS on the night of 22.3.04.*

I did not go to the PS on the night of 23.3.04. I had seen Pinki alive 3 days earlier on 19.3.04. On that day I did not meet Ram Kumar. Nor did he meet me on 20th or 21st March, 2004. There is a different passage to the first floor. I did not tell police that I had seen Pinki alive on 19.03.04 for the last time. Vol. Nobody asked me about this. The key of the separate passage to the first floor was not with me. The premises on the first floor consisted of one bedroom, kitchen, bar and toilet. There is one mezzanine floor between the ground and the first floor. The mezzanine floor was occupied by two boys as tenants. Now I do not remember the names of those two boys.

The police had made enquiry from those boys. Those boys were using the same latrine and bath as was used by the tenant of the first floor. It is correct that anybody could have gone to the first floor without my knowledge during that period. I did not meet the accused during day time on 22.3.04. Dipti, the servant of the accused was aged about 17 or 18 years. When I returned home, from the unit of the accused, the police was still there and they stayed at my house till 4 am. Crime Team had come to my house. They had left with the local police.”

PW7 the wife of PW3 has also corroborated his testimony. However, there was some ambiguity about the date when she saw the deceased:

“I know the accused present in Court. He was residing in our house as a tenant. He was inducted as a tenant about 2/3 months before Durga Pooja at Rs. 1400/- per month. When the accused came to occupy the premises he was accompanied by his wife and 1 ½ year old daughter. The accused had told that the name of his wife was Sweta @ Pinki. He was serving in the army at Dhaula Kuan. The accused went to his native place with his family and when they returned, a girl aged 21/22 years came with them. The name of that girl was Deepti.

On 23.3.2004, the accused came around 7 or 8 am he went upstairs to the tenanted premises, I heard sound of breaking lock and then I went upstairs. By that time the lock had been broken and the accused had entered his room. The accused was standing in the door of the room. I was in the staircase. I said to the accused that foul smell was emitting from his room. He replied that his daughter Neha had passed latrine and the smell might be emitting from her underwear. I came downstairs. On the same day at about 10.30 PM the accused handed over the key of his room to my husband and then he left saying that the key may be given to Sweta or Deepti whenever they came. About half an hour later when I and my husband went upstairs we noticed that the light of the room of the accused was on and the cooler was running. My husband opened the lock of the room. We saw that the deadbody of Pinki was lying in the lower part of the almirah. The face of the

deadbody was found covered with a chader. I had not seen the face of the deadbody and I presumed that it must have been the deadbody of Pinki. Thereafter I never saw Pinki alive.

XXXXXXX by Sh. K.S. Shehrawat, Advocate with Sh Vipin Shehrawat advocates for accused.

I am illiterate. I can however sign in Hindi. I have three children, i.e. two sons and one daughter. My elder son is aged about 18/19 years. My daughter is eldest and her marriage took place on 22.11.2004. The engagement of my daughter took place on 22.3.04. My husband was at home on that day. ”

18. The mobile crime team report in the present case, Ex. PW-11/A shows that the team went to the spot between 1 and 2 AM on 24-3-2004. The body was kept in the morgue for 72 hours, at the request of the police (Ex. PW-24/L dated 26-3-2004). The deceased was not identified by her mother, who could be contacted only after 5-4-2004 (deposition of PW-8), and therefore her body was identified on 27-3-2004 by PW-3 (Ex. PW-3/H). The death report (Ex. PW-24/K) was prepared on 27-3-2004. Also, Ex. PW-24/J, the brief facts of the case were prepared on 27-3-2004. The same day, a request for post-mortem was made, and the post mortem procedure was conducted on the body.

19. It is axiomatic that credibility of evidence is not quantity dependent, in terms of number of witnesses who corroborate an allegation, but qualitative. Therefore, the mere fact that PW-3's evidence was relied on heavily, is not *ipso facto* a negative aspect. Yet, the nature of the testimony should be such as would stand the test of credibility and inspire the confidence of the court. The post-mortem report, in this case, fixes the time of death at 4-1/2 days before the procedure was done (at 11-40 AM on 27-03-2004 as per Ex. PW-19/A), thus resulting in the probable time of death

being 22-3-2004 at 11-40 PM. If one keeps this in mind, the deposition of PW-7 becomes significant. She had testified that her daughter, and that of PW-3 got engaged on 22-3-2004. She claimed that she saw the accused on 23-3-2004, in the evening, when he broke open the lock. Her husband, PW-3, on the other hand did not mention any of these, or that the accused had broken the lock. The extracted portions of his deposition clearly show that he categorically stated (contrary to his statement before police) that he saw the accused leaving on 22-3-2004 and reported the incident soon after that, when the cooler had not been switched off which led him to go up and discover the dead body. One can ignore the discrepancy in the date, because there is overwhelming evidence showing that the reporting of the incident took place late evening of 23-3-2004 or the early morning of 24-3-2004. The DD entries, the crime team report, deposition of PW-7, statement of all witnesses, the *rukka*, and the FIR itself, mention that the disappearance of the accused and discovery of the body was reported on 23-3-2004. It was not as though the landlord PW-3 discovered the fact the previous day, and reported the incident later. The confusion in the date, by PW-3 appears to have been genuine, and if one were to go by his wife's account, on 22-3-2004, their daughter's engagement took place, and the witness (PW-3) appears to have even forgotten that, or failed to account for that, while mentioning the dates. However, in all other material particulars, he supported the prosecution story about how the accused had left the premises, and how on hearing the cooler switched on he decided to go up and found Pinky's body. So far as the odour and the argument on behalf of the appellant being that the attack must have occurred at some other point of time, or the timing of the report being given to the police being something

else is concerned, the Court does not find any substance in the argument. It appears to be premised on the theory that PW-3 saw the accused leaving the premises on 22-3-2004, and the incident being reported that evening. As discussed previously, that is not the correct position.

20. The accused was identified as the father of the deceased's child, by the doctor who helped her deliver it. PW-3 and PW-7 deposed that he lived in the premises as a tenant. The record also discloses that the accused's unit was informed about his arrest. Although the prosecution was unable to produce Deepti, who allegedly had left the premises with the child, (and who later made a statement to the magistrate, in Assam,) that omission does not in any manner weaken the overwhelming nature of incriminating material brought on record against the accused. Counsel for the appellant had urged that PW-3's sons were responsible for the crime, and they were not investigated. However, the evidence of PW-7 reveals that both the sons were young; his daughter got married in November, 2004. In the absence of any details as to why any of those boys would wish to kill the deceased, such as a previous enmity, or rebuffed advance, or some such material, the Court cannot disbelieve the testimonies of PW-3 and PW-7.

21. The Trial Court held that the following circumstances were proved:

- i) The accused was known to the deceased and had intimate relations with her.
- ii) The accused started living with the deceased as husband and wife in the tenanted premises on the first floor of D-48, Dasrath Puri, New Delhi from October 2003.
- iii) According to PW-2 the accused and deceased started living as husband and wife; on 22.03.04 the accused informed PW-2 that he was

going for his posting in Kashmir leaving the deceased in Delhi.

iv) On 22.03.04, at about 5 PM, the accused again made a telephone call to PW-2 intimating her that he had boarded deceased and the child in a train for Guwahati.

v) On 23.03.2004 the accused met PW-3 and when the latter inquired regarding the whereabouts of his wife, child and maid, he replied evasively and left the tenanted premises at about 10.30 PM handing over keys of the premises to PW-3.

vi) On the same day i.e. on 23.03.04, PW-3 found the dead body of the deceased in the tenanted premises and informed the police vide his complaint Ex.PW3/A.

vii) The accused made a disclosure statement and was arrested on 25.03.04 from Chandigarh.

viii) The deceased was hit with a hammer on her head and as per postmortem report, Ex.PW19/A, the cause of death was due to head injuries.

ix) The accused was already married to one Kamlesh but was maintaining physical relations with the deceased and the latter had threatened him to complain to his senior officer if she was not sent to her native place. Thus, there was motive for the accused to commit the murder of deceased.

22. This court is of opinion that all the circumstances, except (ix) are relevant, and material. The last circumstance stems from a reading of the disclosure statement, which is *per se* inadmissible in law. However, even if that finding is not sustained, all other conclusions are based on a reading of the evidence, which is reasonable.

23. In *Sharad Birdhichand Sarda v. State of Maharashtra* AIR 1984 SC 1622, the Supreme Court referred to and relied upon *Hanuman v. State of*

Madhya Pradesh 1952 SCR 1091 and outlined the essential principles on which conviction can be returned in a circumstantial evidence based case as follows:

"(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'.....

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(iii) the circumstances should be of a conclusive nature and tendency.

(iv) they should exclude every possible hypothesis except the one to be proved, and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

24. This court does not find any infirmity in the approach or conclusions of the Trial Court, in convicting the appellant, for the offences he was charged with, and sentencing him in the manner it did. The appeal is therefore meritless and accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

JULY 02, 2012